

Message Text

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PAGE 01 STATE 227133

51

ORIGIN CAB-05

INFO OCT-01 EUR-12 ISO-00 EB-06 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 RSC-01 FAA-00 L-02 SS-15 NSC-05

/054 R

DRAFTED BY CAB:JRCHES:TP

APPROVED BY EB/AN:MHSTYLES

EUR/CAN:EBROWN

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R 161404Z OCT 74

FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA

UNCLAS STATE 227133

E.O. 11652: N/A

TAGS: EAIR, CA

SUBJECT: CIVAIR - NORTHWEST ONTARIO PROBLEM

1. EMBASSY IS AWARE OF SEVERAL YEARS HISTORY OF PROBLEMS CAUSED BY CANADIAN RESTRICTIONS ON US SMALL AIRCRAFT OPERATIONS TO WILDERNESS LAKES IN ONTARIO. SINCE THESE FLIGHTS ARE NOW UNDER NON-SCHEDULED AIR SERVICE AGREEMENT, EMBASSY IS REQUESTED PRESENT NOTE TO EXTERNAL AFFAIRS, AS FOLLOWS:

A. "IT HAS COME TO ATTENTION OF USG THAT THE CLASS 9-4 AIR CHARTER LICENSES PROPOSED BY CANADIAN TRANSPORT COMMISSION (CTC) TO BE ISSUED TO ALL US AIR CARRIERS DESIGNATED UNDER NON-SCHEDULED AIR SERVICE AGREEMENT OF MAY 8, 1974, BETWEEN OUR GOVERNMENTS CONTAIN A CONDITION LIMITING TRAFFIC STOPS AND IMPOSING A TECHNICAL (FISH AND GAME INSPECTION) STOP ON ALL FLIGHTS SERVING A SPECIFIED AREA IN NORTHWESTERN ONTARIO, I.E., THAT BETWEEN SAULT STE. MARIE AND THE MANITOBA BORDER. THE PROPOSED CONDITION, IF IMPOSED, WOULD CONTINUE A SITUATION ADVERSE TO SEVERAL UNITED STATES DESIGNATED

UNCLASSIFIED

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PAGE 02 STATE 227133

SMALL AIRCRAFT OPERATORS WHO OFFER FLOAT PLANE OR SKI

PLANE SERVICES, PRIMARILY FROM BORDER POINTS IN US, IN
COMPETITION WITH A SIMILAR VOLUME OF CANADIAN DESIGNATED

SMALL AIRCRAFT OPERATORS OF SIMILARLY EQUIPTED AIRCRAFT
WHO ALSO ENTER US TO SEEK SUCH TRAFFIC.

B. THE PROPOSED CONDITION IF IMPOSED, WOULD CONTINUE
TO PRECLUDE US DESIGNATED CARRIERS FROM PERFORMING US
ORIGINATING CHARTER FLIGHTS TO WILDERNESS LAKE AREAS
UNLESS THE TRAFFIC IS TO BE DEPLANED AT A RESORT, CAMP,
OR OUTPOST OPERATED BY A PERSON LICENSED BY PROVINCE OF
ONTARIO. PASSENGERS WHO DESIRE MOVEMENT TO WILDERNESS
LOCATIONS OTHER THAN SUCH RESORTS, CAMPS OR OUTPOSTS WOULD
NOT BE ALLOWED TO USE US CARRIERS, BUT APPARENTLY WILL
STILL BE ALLOWED BY CANADIAN AUTHORITIES TO USE CANADIAN
CARRIERS. SIMILARLY, US CARRIERS WOULD CONTINUE TO BE
REQUIRED TO MAKE AN OUTBOUND STOP IN CANADA TO HAVE
THEIR UNITED STATES ORIGIN TRAFFIC INSPECTED, BUT
CANADIAN CARRIERS WOULD NOT. THIS PRESUMPTION ARISES
BECAUSE THERE HAS BEEN NO PUBLIC NOTICE, NOR ANY OTHER
INDICATION, OF INTENT BY THE CTC TO LIMIT DESIGNATED
CANADIAN AIR CARRIERS IN THE SAME MANNER. CONSISTENCY
OF REGULATORY ACTION WITH THE TERMS OF THE NONSCHEDULED
AIR SERVICE AGREEMENT WOULD, IN US VIEW, REQUIRE EITHER
NON-IMPOSITION OF THE PROPOSED CONDITION IN NEW 9-4
LICENSES OF DESIGNATED UNITED STATES CARRIERS OR,
ALTERNATIVELY, IMPOSITION OF AN IDENTICAL CONDITION UPON
DESIGNATED CANADIAN CARRIERS.

C. WE BELIEVE THERE ARE GOOD REASONS FOR NOT IMPOSING
PROPOSED CONDITIONS. WE ARE INFORMED, FOR EXAMPLE, THAT
GREAT DIFFICULTIES HAVE BEEN EXPERIENCED IN OBTAINING
PRECISE INTERPRETATIONS OF WHAT IS MEANT BY "... A RESORT,
CAMP OR OUTPOST OPERATED BY A PERSON DULY LICENSED FOR
SUCH PURPOSE BY THE GOVERNMENT OF THE PROVINCE OF ONTARIO
..." AT LEAST ONE UNITED STATES CARRIER HAS INCURRED
THOUSANDS OF DOLLARS OF EXPENSE IN A FINE AND LEGAL COSTS,
EVEN THOUGH THAT CARRIER FELT HE WAS OPERATING IN
ACCORDANCE WITH THE FOREGOING LANGUAGE. SIMILARLY, ONE
ACTIVE CARRIER REPORTS THAT IN TREE YEARS OF OPERATIONS
UNCLASSIFIED

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PAGE 03 STATE 227133

ONLY TWO FISH AND GAME VIOLATIONS WERE DETECTED, BOTH
OF WHICH WERE THE RESULT OF ACKNOWLEDGED ERRORS ON THE
PART OF THE CANADIAN RESORT OPERATOR. YET THIS CARRIER
ALONE WAS REQUIRED TO MAKE NEARLY FOURTEEN HUNDRED
LANDINGS AND TAKEOFFS TO PERMIT INSPECTION, CAUSING A
SIGNIFICANT WASTE OF FUEL AND ADDITIONAL HAZARD TO
AIRCRAFT AND OCCUPANTS.

D. US DOES NOT OPPOSE NON-DISCRIMINATORY RESTRICTIONS OR BANS BY CANADA ON USE OF CANADIAN WILDERNESS AREAS, EVEN TO THE CLOSING OF SUCH AREAS TO AIR TRAFFIC SHOULD THAT BECOME NECESSARY, E.G., FOR ECOLOGICAL REASONS. WHEN HOWEVER, BANS OR RESTRICTIONS ARE APPLIED SOLELY TO FOREIGN CARRIERS, WITH CANADIAN CARRIERS EXEMPTED FROM THE BANS OR RESTRICTIONS ON SAME INTERNATIONAL MOVEMENT OF THE SAME INTERNATIONAL TRAFFIC, THE MATTER IS MANIFESTLY NOT AN ENVIRONMENTAL PROBLEM. THE STATE OF REGISTRATION OF AN AIRCRAFT, OR THE NATIONALITY OF ITS PILOT, HAS NO BEARING UPON WHETHER A HUNTER OR FISHERMAN WHO ARRIVED AT HIS WILDERNESS DESTINATION BY AIR MAY OR MAY NOT CAUSE POLLUTION OR VIOLATE FISH AND GAME LAWS DURING HIS STAY. THE REAL EFFECT OF THIS DISCRIMINATION IS TO ALLOW CANADIAN CARRIERS TO RECEIVE THE FINANCIAL BENEFITS OF PROTECTION FROM COMPETITION. WHILE THIS SITUATION HAS PREVAILED IN RECENT YEARS IN THE ABSENCE OF BILATERAL AGREEMENT, THE EXISTENCE OF THE AGREEMENT PLACES THE MATTER IN A NEW LIGHT.

E. THE INTERNATIONAL TRAFFIC IN QUESTION ORIGINATES (IN AGREEMENT TERMS IS "ENPLANED") ENTIRELY IN THE US AND IS "DEPLANED" AND "RE-ENPLANED" ENTIRELY IN CANADA. THE RIGHTS EXCHANGED FOR US CARRIERS AND FOR CANADIAN CARRIERS (ANNEX A, PARAGRAPH B OF SECTION II AND PARAGRAPH A OF SECTION III, RESPECTIVELY) HAVE THE IDENTICAL PHRASE AUTHORIZING SERVICE "...AT ANY POINT IN THE TERRITORY OF CANADA..." EITHER PARTY TO THE AGREEMENT MAY, OF COURSE, DETERMINE THAT PARTICULAR POINTS MAY NOT BE USED IN INTERNATIONAL AIR TRANSPORTATION FOR LANDINGS AND TAKEOFFS. IF, HOWEVER, CERTAIN POINTS (IN THIS CASE WILDERNESS LAKES WITHIN A DEFINED AREA) ARE TO BE CLOSED TO CARRIERS DESIGNATED BY THE

UNCLASSIFIED

PAGE 04 STATE 227133

UNITED STATES FOR TRANSBORDER FLIGHTS, ARTICLE XIV OF THE AGREEMENT WOULD REQUIRE THAT THE GOVERNMENT OF CANADA ALSO CLOSE THEM TO TRANSBORDER SERVICES BY CANADIAN CARRIERS DESIGNATED UNDER THE AGREEMENT. IN THE UNITED STATES VIEW, THIS WOULD BE REQUIRED OF ALL FLIGHTS WHERE THE CANADIAN CARRIER MIGHT SEEK TO DEPLANE OR RE-ENPLANE ANY TRAFFIC WHICH IT ENPLANED IN THE UNITED STATES, WHETHER OR NOT THE CARRIER MIGHT SEEK TO DISGUISE THE INTERNATIONAL CHARACTER OF THE MOVEMENT BY ENTERING INTO A SEPARATE CONTRACT WITH THE INTERNATIONAL PASSENGERS FOR ANY LEGS OF THE JOURNEY WITHIN CANADA, E.G., BY CONTRACTING SEPARATELY FOR THE MOVEMENT FROM THE POINT WHERE A STOP IS MADE TO CLEAR CANADIAN CUSTOMS TO THE ACTUAL WILDERNESS DESTINATION.

F. ALSO RELEVANT IS PARAGRAPH D OF SECTION V OF ANNEX A TO THE AGREEMENT WHICH READS AS FOLLOWS:

"EACH CONTRACTING PARTY RECOGNIZES THAT FOR ECOLOGICAL REASONS IT MAY BE NECESSARY TO PLACE RESTRICTIONS OR BANS WITHIN ITS TERRITORY ON CERTAIN NONSCHEDULED AIR SERVICES, SUCH AS FLOAT PLANE FLIGHTS TO AND FROM WILDERNESS LAKES. IF SUCH RESTRICTIONS OR BANS ARE APPLIED TO THE INTERNATIONAL TRAFFIC OF CARRIERS OF THE OTHER CONTRACTING PARTY TO AND FROM THE ULTIMATE DESTINATIONS OF THE TRAFFIC IN THE AFFECTED AREA, THAT OTHER CONTRACTING PARTY MAY IMPOSE SUCH CONDITIONS ON THE CARRIERS OF THE CONTRACTING PARTY PLACING THE RESTRICTIONS OR BANS AS MAY BE NECESSARY TO ENSURE EQUALITY OF TREATMENT WITH RESPECT TO SUCH TRAFFIC."

G. THIS PROVISION DOES NOT RELIEVE THE CANADIAN GOVERNMENT FROM APPLYING RESTRICTIONS IN A NON-DISCRIMINATORY MANNER IN ACCORDANCE WITH ARTICLE XIV OF THE AGREEMENT. ITS INTENT AND PURPOSE WAS TO MAKE IT CLEAR THAT, SHOULD THE CANADIAN AUTHORITIES NOT APPLY THE NON-DISCRIMINATORY RESTRICTIONS TO ITS OWN CARRIERS IN SUCH A MANNER AS TO PREVENT EVASION METHODS, SUCH AS SEPARATE CONTRACTING FROM THE CUSTOMS ENTRY POINT TO A WILDERNESS LAKE, THE US AUTHORITIES WOULD BE FREE TO TAKE NECESSARY ACTION TO ASSURE EQUALITY OF TREATMENT.

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PAGE 05 STATE 227133

H. THE USG WOULD EXPECT, THEREFORE, THAT IF ANY RESTRICTIONS ARE TO BE IMPOSED ON US DESIGNATED CARRIERS IN NEW LICENSES, OR BY CTC ORDER OR REGULATION, RESTRICTIONS IDENTICAL IN APPLICABILITY WILL BE PLACED BY IT UPON CANADIAN DESIGNATED CARRIERS. SUCH ACTION WOULD AVOID THE NECESSITY OF THE US AUTHORITIES CONSIDERING THE IMPOSITION ON CANADIAN CARRIERS OF "RESTRICTIONS OR BANS AS MAY BE NECESSARY TO ENSURE EQUALITY OF TREATMENT WITH RESPECT TO SUCH TRAFFIC."

I. IN VIEW OF THE INJUSTICE IN THE PRESENT SITUATION, AND IN THE EXPECTATION THAT THE GOVERNMENT OF CANADA SHARES THE DESIRE TO RESOLVE THIS PROBLEM, THE USG WOULD APPRECIATE AN EARLY RESPONSE."

2. IN PRESENTING NOTE, EMBASSY SHOULD STATE ORALLY THAT, WHILE WE ARE NOT SETTING A DEADLINE, WE HOPE WE CAN HAVE AN ANSWER WITHIN 30 DAYS.

3. IF TIME PERMITS, MEMBERS US DEL TO ECAC TALKS MAY SEEK TO DISCUSS THIS MATTER INFORMALLY WITH CANADIANS.

4. POUCH COPIES OF NOTE TO OA/AN (FOR STYLES), AND TO
CAB (CHESN). KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AIR CARGO, AVIATION REGULATIONS, SUPPLEMENTAL AIRLINES, LICENSES
Control Number: n/a
Copy: SINGLE
Draft Date: 16 OCT 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE227133
Document Source: CORE
Document Unique ID: 00
Drafter: JRCHESEN:TP
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740294-0462
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741042/aaaabjms.tel
Line Count: 226
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN CAB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 04 MAR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 MAR 2002 by chappeld>; APPROVED <19-Aug-2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CIVAIR - NORTHWEST ONTARIO PROBLEM
TAGS: EAIR, CA, US
To: OTTAWA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005